

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Simmons-SLC, LS, LLC	)	File Number: EB-02-DV-076
	)	
Licensee of FM Station KJQN	)	NAL/Acct. No. 200332800009
Brigham City, Utah	)	FRN 0004-9693-74
Facility ID #81867	)	
	)	
Licensee of FM Translator Station K264AC	)	
Utah County, Utah	)	
Facility ID #60459	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: January 6, 2003

By the Acting District Director, Denver Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Simmons-SLC, LS, LLC, ("Simmons") licensee of FM station KJQN in Brigham City, Utah, and translator station K264AC, in rural Utah County, Utah, apparently willfully and repeatedly violated Section 74.1232(d) of the Commission's Rules ("Rules"),<sup>1</sup> by using station K264AC to extend the 1 mV/m contour of FM station KJQN beyond its authorized contour. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>2</sup> that Simmons is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

**II. BACKGROUND**

2. Station K264AC is licensed to Simmons and authorized to provide fill-in service for Simmons owned FM station KSFI in Salt Lake City, Utah. Station K264AC is authorized to provide service to rural Utah County and to transmit from West Mountain, approximately 40 miles south of downtown Salt Lake City.

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<sup>1</sup> 47 C.F.R. § 74.1232(d).

<sup>2</sup> 47 U.S.C. § 503(b).

3. On April 10, 2002, the Denver Office received a complaint that FM translator station K264AC was transmitting FM station KJQN's signal beyond the 1 mV/m contour into areas approximately 50 miles south of downtown Salt Lake City. Simmons also owns station KJQN which is licensed to Brigham City, Utah, and transmits from Cow Mountain approximately 70 miles north of downtown Salt Lake City. KJQN's 1 mV/m contour lies entirely north of downtown Salt Lake City and station K264AC's 1 mV/m contour lies entirely south of downtown Salt Lake City. The authorized 1 mV/m contours of K264AC and KJQN do not overlap.

4. On April 10, 2002, the Denver Office agent contacted Simmons' Director of Engineering. The engineer admitted that K264AC was transmitting the signal of station KJQN rather than KSFI; that station K264AC's coverage contour is outside of KJQN's 1 mV/m contour; and that station K264AC had been operating with that configuration for approximately 30 days.

5. On October 21, 2002, the Denver Office issued a Notice of Violation ("NOV") to Simmons for violation of Section's 74.1232(d) and 74.1251(c) of the Rules. On October 31, 2002, the Denver Office received a response from Simmons stating that station K264AC ceased transmitting the signal of station KJQN on April 11, 2002.

### III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>3</sup> The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term "repeated" means the commission or omission of the Act more than once or for more than one day.<sup>4</sup>

7. A broadcast station licensee is responsible for maintaining and operating the station in accordance with the terms of the station license. Section 74.1232(d) of the Rules sets forth generally that an authorization for a FM translator whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to the licensee or permittee of a commercial FM radio broadcast station. Translator station K264AC was authorized to transmit the signal of its primary station KSFI. By using station K264AC to transmit station KJQN, Simmons failed to comply with the terms of station K264AC's license and improperly extended the 1 mV/m contour of station KJQN. Based on the evidence, we find that Simmons willfully and repeatedly violated Section 74.1232(d) of the Rules by extending the 1 mV/m contour of FM station KJQN.

8. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),<sup>5</sup> and Section 1.80 of the

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>5</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

Commission's Rules,<sup>6</sup> do not specify a base forfeiture for violation of the terms and conditions of the license by extending the 1 mV/m contour of a FM primary radio station. Therefore we must determine an appropriate amount for this violation.<sup>7</sup> Similar operational parameters such as construction or operation at an unauthorized location, exceeding power limits, and using an unauthorized frequency, carry a base forfeiture of \$4,000. Accordingly, we believe a base forfeiture in the amount of \$4,000 is appropriate. Translator station K264AC is legally licensed by the FCC as a fill-in translator for primary FM station KSFI. In this instance, translator station K264AC was not being used for this purpose and would not be authorized at the specified location by the Commission because the operation extends the 1 mV/m contour of a FM primary station. Therefore, translator station K264AC's operation is treated as construction or operation at an unauthorized location, and a base forfeiture of \$4,000 will be assessed.

9. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,<sup>8</sup> which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$4,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Simmons-SLC, LS, LLC, is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for violation of Section 74.1232(d) of the Rules.<sup>9</sup>

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Simmons-SLC, LS, LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration number (FRN) and also must note the NAL/Acct. No. referenced in the caption.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, and MUST INCLUDE THE NAL/Acct. No. referenced in the caption.

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<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "any omission of a specific rule violation from the...[*Forfeiture Policy Statement*]...should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17,099. See e.g., *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>9</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, and 74.1232(d).

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>10</sup>

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 0320 0002 9702 9448, Return Receipt Requested and First Class Mail, to Simmons-SLC, LS, LLC, 515 South 700 East – Suite 1C, Salt Lake City, Utah 84102.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears  
Acting District Director, Denver Office

Enclosure: Attachment A

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<sup>10</sup> See 47 C.F.R. § 1.1914.